

**Introduced by Senator Murray**

December 7, 1998

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An act to add Chapter 7 (commencing with Section 16860) to Part 3 of Division 4 of Title 2 of the Government Code, and to add Section 20103 to, and to add Article 1.6 (commencing with Section 10116) to Chapter 1 of Part 2 of Division 2 of, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 73, as introduced, Murray. State contracts: participation goals.

(1) Existing law requires any awarding department taking bids in connection with the award of a contract for professional bond services to provide, in the general conditions under which bids will be received, that any person making a bid or offer shall set forth information regarding subcontracts that would be utilized to meet participation goals by various enterprises.

The State Contract Act also requires a state agency to award a contract to the lowest responsible bidder who either meets, or makes a good faith effort to comply with, participation goals for designated business enterprises.

Under existing law, fraudulent conduct in connection with these procedures is punishable as a misdemeanor.

This bill, in addition, would provide for statewide participation goals of not less than 30% for small business enterprises with respect to professional bond services and state contracts, generally. "Small business enterprise" would be defined as having the same meaning as "small-business

concern” under specified federal law. By creating a new crime, the bill would impose a state-mandated local program.

(2) The Local Agency Public Construction Act generally sets forth the authority and duties of local agencies in awarding contracts on public works.

This bill would additionally authorize a local agency to establish incentive programs to encourage participation in the contracting process by small business enterprises.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 7 (commencing with Section  
2 16860) is added to Part 3 of Division 4 of Title 2 of the  
3 Government Code, to read:

4

5 CHAPTER 7. SMALL BUSINESS ENTERPRISE PARTICIPATION

6

GOALS FOR PROFESSIONAL BOND SERVICES

7

8 16860. (a) Notwithstanding any other provision of  
9 law, each awarding department shall have an annual  
10 statewide participation goal of not less than 30 percent for  
11 small business enterprises for contracts entered into by  
12 the awarding department during the year for each of the  
13 professional bond services. This section shall not apply if  
14 a contract for professional bond services of an  
15 underwriter is to be obtained by competitive bid.  
16 However, each awarding department shall establish goals  
17 for contracts to be obtained by competitive bid for  
18 professional bond services.

19 These goals shall apply to the overall dollar amount  
20 expended by the awarding department with respect to  
21 the contracts for professional bond services relating to the



1 issuance of bonds by the awarding department including  
2 amounts spent as underwriter's discounts.

3 (b) In attempting to meet the goals set forth in  
4 subdivision (a), the awarding department shall consider  
5 establishing co-counsel, joint venture, and subcontracting  
6 relationships including small business enterprises in all  
7 contracts for bonds awarded by the awarding  
8 department. However, nothing in this article shall  
9 preclude the awarding department from achieving the  
10 goals set forth in this section without requiring joint  
11 ventures, co-counsel, or subcontracting arrangements.

12 (c) This section shall not limit the ability of any  
13 awarding department to meet a goal higher than those set  
14 forth in subdivision (a) for participation by small business  
15 enterprises in contracts awarded by the awarding  
16 department.

17 (d) Nothing in this chapter shall be construed to  
18 authorize any awarding department to discriminate in  
19 the awarding of any contract on the basis of race, color,  
20 sex, ethnic origin, or ancestry.

21 16861. As used in this chapter, the following  
22 definitions apply:

23 (a) "Awarding department" means any agency,  
24 department, constitutional officer, governmental entity,  
25 or other officer or entity of the state empowered by law  
26 to issue bonds on behalf of the State of California.

27 (b) "Bonds" means bonds, notes, warrants, certificates  
28 of participation, and other evidences of indebtedness  
29 issued by or on behalf of the State of California.

30 (c) "Contract" includes any contract, agreement, or  
31 joint agreement to provide professional bond services to  
32 the State of California or an awarding department.

33 (d) "Contractor" means any provider of professional  
34 bond services who enters into a contract with an  
35 awarding department.

36 (e) "Foreign corporation," "foreign firm," or  
37 "foreign-based business" means a business entity that is  
38 incorporated or has its principal headquarters located  
39 outside the United States.

(f) “Goal” means a numerically expressed objective that awarding departments and providers of professional bond services are required to make efforts to achieve.

(g) “Management and control” means effective and demonstrable management of the business entity.

(h) “Professional bond services” include services as financial advisers, bond counsel, underwriters in negotiated transactions, underwriter’s counsel, financial printers, feasibility consultants, and other professional services related to the issuance and sale of bonds.

(i) “Small business enterprise” has the same meaning as “small-business concern,” as specified in Section 632 of Title 15 of the United States Code.

16862. Notwithstanding Section 16860, if a contract for professional bond services of an underwriter is to be obtained by competitive bid, the awarding department shall, at a minimum, take all of the following actions:

(a) Deliver the notice of sale or other notification of intention to the issue the bonds to all small business enterprises that have listed their names with the awarding department for the purpose of this notice and other qualified small business enterprises known to the awarding department.

(b) State in all notices of sale and other notifications of intention to issue bonds that small business enterprises are encouraged to respond.

(c) Require all submitting bidders to certify their awareness of the goals of the awarding department in accordance with this chapter.

(d) Nothing in this section shall be construed to authorize any awarding department to discriminate in the solicitation of bids or in the awarding of contracts on the basis of race, color, sex, ethnic origin, or ancestry.

16863. (a) Any awarding department taking bids in connection with the award of any contract shall provide, in the general conditions under which bids will be received, that any person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a small or disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill small and disabled veteran business enterprise participation goals.

(2) The portion of work that will be done by each subcontractor under paragraph (1). The prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his or her bid or offer.

(b) The Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code) shall apply to the information required by subdivision (a) relating to subcontractors certified as small and disabled veteran business enterprises.

(c) For purposes of this section, “subcontractor” and “prime contractor” shall have the same meaning as those terms are defined in Section 4113 of the Public Contract Code.

16864. (a) The awarding department shall establish a method of monitoring adherence to the goals specified in Section 16860, including requiring a followup report from all contractors upon the completion of any sale of bonds.

(b) The awarding department shall adopt rules and regulations for the purpose of implementing this section. Emergency regulations consistent with this section may be adopted.

16865. In implementing this chapter, the awarding department shall utilize existing resources such as the Office of Small and Minority Business.

16866. On January 1 of each year, each awarding department shall report to the Governor and the Legislature, notwithstanding Section 7550.5, on the level of participation by small business enterprises in contracts as identified in this chapter. If the established goals are

1 not met, the awarding department shall report the  
2 reasons for its inability to achieve the goals and identify  
3 steps it shall take in an effort to achieve the goals.

4 16867. (a) Notwithstanding anything in this chapter  
5 to the contrary, the validity or enforceability of any bonds  
6 to which this chapter applies shall not be affected in any  
7 way by the failure of an awarding department to meet the  
8 goals established under this chapter.

9 (b) No action may be maintained to enjoin the  
10 issuance of any bonds to which this chapter applies or the  
11 enforcement of any contract for professional bond  
12 services based on an awarding department's failure to  
13 meet the goals set forth in Section 16860.

14 16868. (a) It shall be unlawful for a person to do any  
15 of the following:

16 (1) Knowingly and with intent to defraud,  
17 fraudulently obtain, retain, attempt to obtain or retain, or  
18 aid another in fraudulently obtaining or retaining or  
19 attempting to obtain or retain, acceptance or certification  
20 as a small or disabled veteran business enterprise, for the  
21 purposes of this chapter.

22 (2) Willfully and knowingly make a false statement  
23 with the intent to defraud, whether by affidavit, report,  
24 or other representation, to a state official or employee for  
25 the purpose of influencing the acceptance or certification  
26 or denial of acceptance or certification of any entity as a  
27 small or disabled veteran business enterprise.

28 (3) Willfully and knowingly obstruct, impede, or  
29 attempt to obstruct or impede, any state official or  
30 employee who is investigating the qualifications of a  
31 business entity that has requested acceptance or  
32 certification as a small or disabled veteran business  
33 enterprise.

34 (4) Knowingly and with intent to defraud,  
35 fraudulently obtain, attempt to obtain, or aid another  
36 person in fraudulently obtaining or attempting to obtain,  
37 public moneys to which the person or firm is not entitled  
38 under this chapter.

39 (5) Establish, or cooperate in the establishment of, or  
40 exercise control over, a firm found to have violated any



1 of paragraphs (1) to (4), inclusive. Any person or firm  
2 who violates this paragraph is guilty of a misdemeanor  
3 and shall be liable for a civil penalty not to exceed fifty  
4 thousand dollars (\$50,000) for the first violation, and a  
5 civil penalty not to exceed two hundred thousand dollars  
6 (\$200,000) for each additional or subsequent violation.

7 (b) Any person who violates paragraphs (1) to (4),  
8 inclusive, of subdivision (a) is guilty of a misdemeanor  
9 and shall be liable for a civil penalty not to exceed five  
10 thousand dollars (\$5,000) for the first violation, and a civil  
11 penalty not to exceed twenty thousand dollars (\$20,000)  
12 for each additional or subsequent violation.

13 (c) Any person or firm that violates subdivision (a)  
14 shall, in addition to the penalties provided for in  
15 subdivision (b), be suspended from bidding on, or  
16 participating as either a contractor or subcontractor in,  
17 any contract awarded by the state for a period of not less  
18 than 30 days nor more than one year. However, for an  
19 additional or subsequent violation, the period of  
20 suspension shall be extended for a period of up to three  
21 years. Any person or firm that fails to satisfy the penalties  
22 imposed pursuant to subdivisions (b) and (c) shall be  
23 prohibited from further contracting with the state until  
24 the penalties are satisfied.

25 (d) The awarding department shall report all alleged  
26 violations of this section to the Office of Small and  
27 Minority Business. The office shall subsequently report all  
28 alleged violations to the Attorney General who shall  
29 determine whether to bring a civil action against any  
30 person or firm for violation of this section.

31 (e) The office shall monitor the status of all reported  
32 violations and shall maintain and make available to all  
33 state departments a central listing of all firms and persons  
34 who have been determined to have committed violations  
35 resulting in suspension.

36 (f) No awarding department shall enter into any  
37 contract with any person or firm suspended for violating  
38 this section during the period of the person's or firm's  
39 suspension. No awarding department shall award a  
40 contract to any contractor utilizing the services of any

1 person or firm as a subcontractor suspended for violating  
2 this section during the period of the person's or firm's  
3 suspension.

4 (g) The awarding department shall check the central  
5 listing provided by the office to verify that the person,  
6 firm, or contractor to whom the contract is being  
7 awarded, or any person, or firm, being utilized as a  
8 subcontractor by that person, firm, or contractor, is not  
9 under suspension for violating this section.

10 (h) This section shall not apply to business enterprise  
11 programs conducted by public utility companies  
12 pursuant to the California Public Utilities Commission's  
13 General Order 156.

14 SEC. 2. Article 1.6 (commencing with Section 10116)  
15 is added to Chapter 1 of Part 2 of Division 2 of the Public  
16 Contract Code, to read:

17  
18 Article 1.6. Small and Disabled Veteran Business  
19 Participation Goals for State Contracts  
20

21 10116. (a) The Legislature finds and declares all of  
22 the following:

23 (1) The essence of the American economic system of  
24 private enterprise is free competition. Only through full  
25 and free competition can free markets, reasonable and  
26 just prices, free entry into business, and opportunities for  
27 the expression and growth of personal initiative and  
28 individual judgment be assured. The preservation and  
29 expansion of that competition is basic to the economic  
30 well-being of this state and that well-being cannot be  
31 realized unless the actual and potential capacity of small  
32 and disabled veteran business enterprises is encouraged  
33 and developed. Therefore, it is the declared policy of the  
34 state to aid the interests of small and disabled veteran  
35 business enterprises in order to preserve reasonable and  
36 just prices and a free competitive enterprise, to ensure  
37 that a fair proportion of the total number of contracts or  
38 subcontracts for commodities, supplies, technology,  
39 property, and services are awarded to small and disabled



1 veteran business enterprises, and to maintain and  
2 strengthen the overall economy of the state.

3 (2) The opportunity for full participation in our free  
4 enterprise system by small and disabled veteran business  
5 enterprises is essential if this state is to attain social and  
6 economic equality for those businesses and improve the  
7 functioning of the state economy.

8 (3) State agencies that have established short- and  
9 long-range minority, women, and disabled veteran  
10 participation goals are awarding 23 percent or more of  
11 their contracts to these business enterprises.

12 (4) It is in the state's interest to expeditiously improve  
13 the economically disadvantaged position of small and  
14 disabled veteran business enterprises.

15 (5) The economic position of these businesses can be  
16 improved by providing long-range substantial goals for  
17 procurement by state agencies of commodities,  
18 professional services, and construction work from small  
19 and disabled veteran businesses.

20 (6) Procurement by state agencies of goods and  
21 services from these businesses also benefits the state  
22 agencies and the citizens of the state by encouraging the  
23 expansion of the number of vendors for procurements,  
24 thereby encouraging competition among the vendors  
25 and promoting economic efficiency in the process.

26 (b) It is the purpose of this article to do all of the  
27 following:

28 (1) Encourage greater economic opportunity for  
29 small and disabled veteran business enterprises.

30 (2) Promote competition among state agencies in  
31 order to enhance long-term economic efficiency in the  
32 procurement of construction, commodities, and  
33 professional services contracts.

34 (3) Clarify and expand the program for the  
35 procurement by state agencies of commodities,  
36 professional services, and construction work from small  
37 and disabled veteran business enterprises.

38 (c) Notwithstanding any other provision of law,  
39 contracts awarded by any state agency, department,  
40 officer, or other state governmental entity for

1 construction, professional services (except those subject  
2 to Chapter 6 (commencing with Section 16850) or  
3 Chapter 7 (commencing with Section 16860) of Part 3 of  
4 Division 4 of Title 2 of the Government Code), materials,  
5 supplies, equipment, alteration, repair, or improvement  
6 shall have statewide participation goals of not less than 30  
7 percent for small business enterprises and 3 percent for  
8 disabled veteran business enterprises. These goals apply  
9 to the overall dollar amount expended each year by the  
10 awarding department, as defined by Section 10116.1,  
11 pursuant to this article.

12 10116.1. As used in this article, the following  
13 definitions apply:

14 (a) “Awarding department” means any state agency,  
15 department, governmental entity, or other officer or  
16 entity authorized by law to enter into contracts on behalf  
17 of the state.

18 (b) “Contract” includes any agreement or joint  
19 development agreement to provide labor, services,  
20 material, supplies, or equipment in the performance of a  
21 contract, franchise, concession, or lease granted, let, or  
22 awarded for and on behalf of the state.

23 (c) “Contractor” means any person or persons,  
24 regardless of race, color, sex, ethnic origin or ancestry, or  
25 any firm, partnership, corporation, or combination  
26 thereof, whether or not a small business enterprise, who  
27 submits a bid and enters into a contract with a  
28 representative of a state agency, department,  
29 governmental entity, or other officer authorized by law  
30 to enter into contracts on behalf of the state.

31 (d) “Goal” means a numerically expressed objective  
32 that awarding departments and contractors are required  
33 to make efforts to achieve.

34 (e) “Small business enterprise” has the same meaning  
35 as “small-business concern,” as specified in Section 632 of  
36 Title 15 of the United States Code.

37 10116.2. (a) In awarding contracts to the lowest  
38 responsible bidder, the awarding department shall  
39 consider the efforts of a bidder to meet small business  
40 enterprise and disabled veteran business enterprise goals



1 set forth in this article. The awarding department shall  
2 award the contract to the lowest responsible bidder  
3 meeting or making good faith efforts to meet these goals.

4 (b) A bidder shall be deemed to have made good faith  
5 efforts upon submittal, within time limits specified by the  
6 awarding department, of documentary evidence that all  
7 of the following actions were taken:

8 (1) Contact was made with the awarding department  
9 to identify small and disabled veteran business  
10 enterprises.

11 (2) Contact was made with other state and federal  
12 agencies, and with local small and disabled veteran  
13 business enterprise organizations to identify small and  
14 disabled veteran business enterprises.

15 (3) Advertising was published in trade papers and  
16 papers focusing on small and disabled veteran business  
17 enterprises, unless time limits imposed by the awarding  
18 department do not permit that advertising.

19 (4) Invitations to bid were submitted to potential  
20 small and disabled veteran business enterprise  
21 contractors.

22 (5) Available small and disabled veteran business  
23 enterprises were considered.

24 10116.3. (a) The awarding department shall establish  
25 a method of monitoring adherence to the goals specified  
26 in this article.

27 (b) The awarding department shall adopt rules and  
28 regulations for the purpose of implementing this article.  
29 Emergency regulations consistent with this section may  
30 be adopted.

31 10116.4. In implementing this article, the awarding  
32 department shall utilize existing resources such as the  
33 Office of Small and Minority Business, the Minority  
34 Business Development Agency, and the Small Business  
35 Administration.

36 10116.5. (a) On January 1 of each year, each  
37 awarding department shall report to the Governor and  
38 the Legislature, notwithstanding Section 7550.5 of the  
39 Government Code, on the level of participation by small  
40 and disabled veteran business enterprises in contracts as

1 identified in this article for the fiscal year beginning July  
2 1 and ending June 30. In addition, the report shall contain  
3 the levels of participation by small and disabled veteran  
4 business enterprises for the following categories of  
5 contracts:

6 (1) Construction.

7 (2) Purchases of materials, supplies, and equipment.

8 (3) Professional services.

9 (4) All contracts for a dollar amount of less than  
10 twenty-five thousand dollars (\$25,000).

11 (b) If the established goals are not being met, the  
12 awarding department shall report the reasons for its  
13 inability to achieve the standards and identify remedial  
14 steps it shall take.

15 10116.6. Notwithstanding any other provision of this  
16 article, the failure of an awarding department to meet the  
17 goals established under this article shall not affect the  
18 validity or enforceability of any contract or any bonds,  
19 notes, or other obligations issued by the awarding  
20 department to provide for the payment of any contract  
21 subject to this article.

22 10116.7. (a) Nothing in this article shall be construed  
23 to authorize any awarding department to discriminate in  
24 the awarding of any contract on the basis of race, color,  
25 sex, ethnic origin, or ancestry.

26 (b) Nothing in this article shall be construed to  
27 authorize any contractor to discriminate in the  
28 solicitation or acceptance of bids for subcontracting, or  
29 for materials or equipment, on the basis of race, color, sex,  
30 ethnic origin, or ancestry.

31 10116.8. If any provision of this article or the  
32 application thereof to any person or circumstances is held  
33 invalid, that invalidity shall not affect other provisions or  
34 applications of the article which can be given effect  
35 without the invalid provision or application, and to this  
36 end the provisions of this article are severable.

37 10116.9. (a) It shall be unlawful for a person or firm  
38 to:

39 (1) Knowingly and with intent to defraud,  
40 fraudulently obtain, retain, attempt to obtain or retain, or

1 aid another in fraudulently obtaining or retaining or  
2 attempting to obtain or retain, acceptance or certification  
3 as a small or disabled veteran business enterprise, for the  
4 purposes of this article.

5 (2) Willfully and knowingly make a false statement  
6 with the intent to defraud, whether by affidavit, report,  
7 or other representation, to a state official or employee for  
8 the purpose of influencing the acceptance or certification  
9 or denial of acceptance or certification of any entity as a  
10 small or disabled veteran business enterprise.

11 (3) Willfully and knowingly obstruct, impede, or  
12 attempt to obstruct or impede, any state official or  
13 employee who is investigating the qualifications of a  
14 business entity that has requested acceptance or  
15 certification as a small or disabled veteran business  
16 enterprise.

17 (4) Knowingly and with intent to defraud,  
18 fraudulently obtain, attempt to obtain, or aid another  
19 person or firm in fraudulently obtaining or attempting to  
20 obtain, public moneys to which the person is not entitled  
21 under this article.

22 (5) Establish, or cooperate in the establishment of, or  
23 exercise control over, a firm found to have violated any  
24 of paragraphs (1) to (4), inclusive. Any person or firm  
25 who violates this paragraph is guilty of a misdemeanor  
26 and shall be liable for a civil penalty not to exceed fifty  
27 thousand dollars (\$50,000) for the first violation, and a  
28 civil penalty not to exceed two hundred thousand dollars  
29 (\$200,000) for each additional, or subsequent violation.

30 (b) Any person who violates paragraphs (1) to (4),  
31 inclusive, of subdivision (a) is guilty of a misdemeanor  
32 and shall be liable for a civil penalty not to exceed five  
33 thousand dollars (\$5,000) for the first violation, and a civil  
34 penalty not to exceed twenty thousand dollars (\$20,000)  
35 for each additional or subsequent violation.

36 (c) Any person or firm that violates subdivision (a)  
37 shall, in addition to the penalties provided for in  
38 subdivision (b), be suspended from bidding on, or  
39 participating as either a contractor, subcontractor, or  
40 supplier in, any state contract or project for a period of

1 not less than 30 days nor more than one year. However,  
2 for an additional or subsequent violation the period of  
3 suspension shall be extended for a period of up to three  
4 years. Any person or firm that fails to satisfy the penalties  
5 imposed pursuant to subdivisions (b) and (c) shall be  
6 prohibited from further contracting with the state until  
7 the penalties are satisfied.

8 (d) The awarding department shall report all alleged  
9 violations of this section to the Office of Small and  
10 Minority Business. The office shall subsequently report all  
11 alleged violations to the Attorney General who shall  
12 determine whether to bring a civil action against any  
13 person or firm for violation of this section.

14 (e) The office shall monitor the status of all reported  
15 violations and shall maintain and make available to all  
16 state departments a central listing of all firms and persons  
17 who have been determined to have committed violations  
18 resulting in suspension.

19 (f) No awarding department shall enter into any  
20 contract with any person or firm suspended for violating  
21 this section during the period of the person's or firm's  
22 suspension. No awarding department shall award a  
23 contract to any contractor utilizing the services of any  
24 person or firm as a subcontractor suspended for violating  
25 this section during the period of the person's or firm's  
26 suspension.

27 (g) The awarding department shall check the central  
28 listing provided by the office to verify that the person,  
29 firm, or contractor to whom the contract is being  
30 awarded, or any person or firm being utilized as a  
31 subcontractor by that person, firm, or contractor, is not  
32 under suspension for violating this section.

33 (h) This section shall not apply to business enterprise  
34 programs conducted by public utility companies  
35 pursuant to the California Public Utilities Commission's  
36 General Order 156.

37 10116.10. (a) Notwithstanding any other provision of  
38 this article, statewide participation goals for contracts let  
39 by the Department of Corrections shall be exclusive of  
40 inmate day labor contracts.

(b) The goals established in this article shall also apply to the overall dollar amount expended each year on contracts let by the California Department of Corrections for the purposes of services, maintenance, and supplies excluding contracts for services for inmate medical needs.

10116.11. (a) Any awarding department taking bids in connection with the award of any contract shall provide in the general conditions under which bids will be received, that any person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a small or disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill small and disabled veteran business enterprise participation goals.

(2) The portion of work that will be done by each subcontractor under paragraph (1). Except in cases of emergency where a contract is necessary for the immediate preservation of the public health, welfare, or safety, or protection of state property, the prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his or her bid or offer.

(b) The Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 shall apply to the information required by subdivision (a) relating to subcontractors certified as small or disabled veteran business enterprises.

(c) For purposes of this section, “subcontractor” and “prime contractor” shall have the same meaning as those terms are defined in Section 4113.

(d) As used in this section, “contract” does not include a contract negotiated pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

1 10116.12. Notwithstanding any other provision of law,  
2 contracts awarded by any state agency, department,  
3 officer, or other state governmental entity for the  
4 purchase of general public advertisements shall have  
5 statewide participation goals of not less than 30 percent  
6 for small business enterprises and 3 percent for disabled  
7 veteran business enterprises. These goals apply to the  
8 overall dollar amount expended each year by the  
9 awarding state agency, department, offices, or other state  
10 governmental entity.

11 10116.13. (a) Notwithstanding Section 10116.2, when  
12 awarding contracts for materials, supplies, or equipment,  
13 including electronic data processing goods and services,  
14 an awarding department shall accept the submission by  
15 a bidder of a small and disabled veteran business  
16 enterprise utilization plan that has been approved prior  
17 to the solicitation due date by the Department of General  
18 Services. A business utilization plan shall be considered  
19 approved by the Department of General Services as of  
20 the date submitted to the department so long as the plan  
21 meets the minimum criteria established in paragraphs  
22 (1) to (12), inclusive, and shall be valid for a period of one  
23 year, unless the department has audited the utilization  
24 plan, as authorized under subdivision (b), and  
25 disapproves it for reasons specified under subdivision (c).  
26 The decision of whether to establish a small and disabled  
27 veteran business enterprise utilization plan shall be at the  
28 option of the vendor. If a bidder cites an approved  
29 utilization plan in response to the small and disabled  
30 veteran business enterprise participation requirements  
31 of a solicitation that calls for 30 percent small  
32 business-owned and 3 percent disabled veteran-owned  
33 business participation, then that utilization plan shall be  
34 considered responsive to the participation goals of the  
35 solicitation document. If a solicitation specifies higher  
36 participation goals than those in the bidder's utilization  
37 plan, the bidder shall meet the goals in the solicitation or  
38 make a good-faith effort to do so. At a minimum, the  
39 utilization plan shall include the following information:





1 (1) A statement of the vendor's small and disabled  
2 veteran business enterprise utilization plan, including the  
3 primary objectives of the utilization plan.

4 (2) An explanation showing sufficient business reasons  
5 why the vendor did not meet small and disabled veteran  
6 business enterprise participation goals set forth in the  
7 vendor's small and disabled veteran business utilization  
8 plan submitted to, and approved by, the Department of  
9 General Services in the previous year, if applicable.  
10 Further, if the vendor did not meet the small and disabled  
11 veteran business participation goals in the previous year,  
12 the vendor shall also identify remedial steps it will take to  
13 meet the goals in the current utilization plan.

14 (3) A statement of the vendor's small and disabled  
15 veteran business utilization goals for the succeeding year.  
16 At a minimum, these utilization goals shall be equal to the  
17 statewide participation goals set forth in subdivision (c)  
18 of Section 10116.

19 (4) Estimated total dollars to be subcontracted by the  
20 vendor for sales within the United States for the  
21 succeeding year.

22 (5) Estimated total dollars to be subcontracted by the  
23 vendor for sales within the state for the succeeding year.

24 (6) Total dollars expressed as a percentage of the  
25 amount estimated pursuant to paragraph (4), intended to  
26 be subcontracted with small business enterprises.

27 (7) Total dollars, expressed as a percentage of the  
28 amount estimated pursuant to paragraph (5), intended to  
29 be subcontracted with disabled veteran-owned business  
30 enterprises.

31 (8) A representative listing of the products and  
32 services that the vendor anticipates subcontracting,  
33 including an identification of the types of subcontracting  
34 planned for small and disabled veteran business  
35 enterprises.

36 (9) The name of the individual employed by the  
37 vendor who will administer the vendor's utilization plan,  
38 including a description of the duties of the individual.

39 (10) A description of the efforts that the vendor will  
40 undertake to ensure that small and disabled veteran

1 business enterprises will have an equitable opportunity to  
2 compete for contracts.

3 (11) A listing of the records and reports that the  
4 vendor will maintain to demonstrate the practices and  
5 procedures that have been adopted to comply with the  
6 requirements and goals of the utilization plan.

7 (12) Affirmation that the vendor met the statewide  
8 small and disabled veteran business enterprise utilization  
9 goals for the previous year, if applicable.

10 (b) The Department of General Services shall conduct  
11 random audits of the submitted utilization plans to  
12 determine compliance with this article, and shall retain  
13 on file all submitted utilization plans for auditing  
14 purposes. During any audit of a submitted utilization  
15 plan, the Department of General Services may ask a  
16 vendor to submit a list of all the small and disabled  
17 veteran business enterprises included as subcontractors  
18 in the vendor's plan for the previous year. This  
19 information shall remain confidential. Nothing in this  
20 section shall be construed to require the Department of  
21 General Services to audit all of the small and disabled  
22 veteran business enterprise utilization plans submitted  
23 by individual vendors. The Department of General  
24 Services may establish appropriate fees to cover the  
25 actual costs of conducting random audits and retaining on  
26 file all submitted plans.

27 (c) (1) At any time, the Department of General  
28 Services may disapprove a vendor's small and disabled  
29 veteran business enterprise utilization plan for any of the  
30 following reasons:

31 (A) The utilization plan fails to evidence a vendor's  
32 intention to comply fully with the statewide small and  
33 disabled veteran business enterprise goals for the  
34 succeeding year, as indicated by failure of the utilization  
35 plan to contain the information specified in subdivision  
36 (a).

37 (B) The utilization plan fails to evidence sufficient  
38 business reasons for failure to achieve the small and  
39 disabled veteran business enterprise goals set forth in a



1 utilization plan submitted in the previous year, if  
2 applicable.

3 (C) The utilization plan fails to evidence sufficient  
4 remedial steps the vendor will take if the vendor did not  
5 meet the small and disabled veteran business  
6 participation goals in the previous year, if applicable.

7 (2) If a vendor's utilization plan is disapproved, the  
8 vendor may not submit a new utilization plan to the  
9 department for a period of one year from the date of  
10 disapproval. Prior to disapproval of a vendor's utilization  
11 plan, the vendor shall be entitled to a public hearing and  
12 to five days' notice of the time and place thereof. The  
13 notice shall state the reasons for the hearing.

14 (3) A vendor that submits a small and disabled veteran  
15 business utilization plan that is approved by the  
16 Department of General Services, and that is subsequently  
17 awarded a contract to which the vendor would not  
18 otherwise have been entitled, and who fails to evidence  
19 intention to fully comply with the small and disabled  
20 veteran business enterprise goals in the utilization plan,  
21 or fails to evidence sufficient business reasons for failing  
22 to achieve the small and disabled veteran business  
23 enterprise goals set forth in the utilization plan, shall:

24 (A) Pay to the state any difference between the  
25 contract amount and what the state's cost would have  
26 been if the contract had been properly awarded.

27 (B) In addition to the amount specified in  
28 subparagraph (A), be assessed a penalty in an amount of  
29 not more than 10 percent of the amount of the contract  
30 involved.

31 (C) Be ineligible to transact any business with the  
32 state for a period of not less than three months and not  
33 more than 24 months.

34 Prior to imposition of any sanction under this chapter,  
35 the contractor or vendor shall be entitled to a public  
36 hearing and to five days' notice of the time and place  
37 thereof. The notice shall state the reasons for the hearing.

38 SEC. 3. Section 20103 is added to the Public Contract  
39 Code, to read:

1 20103. Notwithstanding any other provision of law, a  
2 local agency may establish incentive programs to  
3 encourage participation in the contracting process by  
4 small business enterprises.

5 SEC. 4. No reimbursement is required by this act  
6 pursuant to Section 6 of Article XIII B of the California  
7 Constitution because the only costs that may be incurred  
8 by a local agency or school district will be incurred  
9 because this act creates a new crime or infraction,  
10 eliminates a crime or infraction, or changes the penalty  
11 for a crime or infraction, within the meaning of Section  
12 17556 of the Government Code, or changes the definition  
13 of a crime within the meaning of Section 6 of Article  
14 XIII B of the California Constitution.

15 Notwithstanding Section 17580 of the Government  
16 Code, unless otherwise specified, the provisions of this act  
17 shall become operative on the same date that the act  
18 takes effect pursuant to the California Constitution.

